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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,640	11/08/2001	Robert McNeil	OHH-P-23	3204

7590 07/11/2002

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EXAMINER
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OLSZEWSKI, JOAN M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/008,640

Applicant(s)

MCNEIL, ROBERT

Examiner

Joan M. Olszewski

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on November 8, 2000. It is noted, however, that applicant has not filed a certified copy of the 2,325,291 application as required by 35 U.S.C. 119(b).

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both "screws 16" on page 3, line 7 and "body 16" on page 3, line 19. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. (U.S. Patent 5,259,809) in view of Holt (U.S. Patent 5,177,891).

Regarding Claims 1 and 4, Rainey, Jr. discloses a method (Abstract) and apparatus (14) for attracting marine crustaceans (6) to a desired location, as well as the

use of sound to attract animals to traps (column 1, lines 24-25). Rainey, Jr. does not show a storage means containing a recording of the background sound of a preferred habitat of the marine crustacean (6) or a means for transmitting the recording from that location. However, Holt discloses a storage means (200) capable of containing a recording of background sounds that are known to attract fish (column 1, lines 19-25) and a speaker (135) for transmitting the sound. Further, it would be obvious to select a desired background sound based on the likes of the animal trying to be attracted.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the attractant device of Rainey, Jr. to include the sound transmitting device of Holt since in doing so one is merely replacing one known equivalent structure known in the art for another widely used equivalent structure for attracting animals to a trap. Further, to modify the combination above so as to generate a background sound that attracts crustaceans would be obvious when used in a crustacean trap.

Re- Claims 2 and 5, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) for attracting a marine crustacean. Rainey Jr. does not specify the marine crustacean as a lobster. However, examiner maintains that the class Crustacea includes both lobster and shrimp and therefore to modify a trap to catch one or the other would be dependent only on the location and sound generated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recognized that the trap of Rainey, Jr. as modified by Holt, could have been easily used to trap lobsters as well as shrimp.

Re-Claims 3 and 6, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) being located in a lobster trap since the structure is used to confine Crustacea.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Richard et al. U.S. Patent 3,414,873 disclose a fish attracting apparatus.

Hodges U.S. Patent 3,936,970 discloses a fishing lure and method of fishing in order to harvest fish.

Luciano U.S. Patent 4,105,992 discloses an animal attraction method and apparatus.

Simms U.S. Patent 4,697,374 discloses an underwater attractant for aquatic creatures using a waterproof housing.

Price U.S. Patent 5,241,778 discloses a method of attracting insects through the use of sound.

Vielberth U.S. Patent 5,343,442 discloses a process and device for catching fish by means of using sound.

Peters et al. U.S. Patent 5,357,708 disclose an aquatic trap.

Rainey U.S. Patent 5,651,209 discloses a fish attractor capable of emitting sound.

Howse et al. U.S. Patent 6,032,406 disclose an insect trap device with an insect attractant selection including sound.

Watson et al. U.S. Patent 6,047,492 disclose a fishing lure with a water-resistant container housing a module generating fish attracting sounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski  
Examiner  
Art Unit 3643

Application/Control Number: 10/008,640

Page 6

Art Unit: 3643

JMO

July 1, 2002

A handwritten signature in black ink, reading "Kurt Rowan" with a checkmark at the end.

KURT ROWAN  
PRIMARY EXAMINER  
GROUP 3200